

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton; and  
Tony Hammond

Scope of Review of System for Regulating  
Market-Dominant Rates and Classes

Docket No. RM2016-9

ORDER HOLDING PETITION IN ABEYANCE

(Issued April 12, 2016)

I. INTRODUCTION

Under the Postal Accountability and Enhancement Act of 2006 (PAEA),<sup>1</sup> 10 years after date of enactment, the Postal Regulatory Commission (Commission) is mandated to “review the system for regulating rates and classes for market-dominant products established under this section to determine if the system is achieving the objectives in subsection (b), taking into account the factors in subsection (c).” 39 U.S.C. § 3622(d)(3). The PAEA was passed on December 20, 2006, and therefore, the Congressionally-mandated 10-year review cannot legally start until after December 20, 2016. It is only after this 10-year review that the second part of Congress’ mandate to the Commission can begin. The second part of the mandate is: “If the Commission

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<sup>1</sup> Pub. L. 109-435, 120 Stat. 3198 (2006).

determines, after notice and opportunity for public comment, that the system is not achieving the objectives in subsection (b), taking into account the factors in subsection (c), the Commission may, by regulation, make such modification or adopt such alternative system for regulating rates and classes for market-dominant products as necessary to achieve the objectives.” *Id.*

## II. POSTAL SERVICE PETITION

The Postal Service’s filing requests the Commission to “clarify its position . . . as to which aspects of the current market-dominant regulatory structure fall within the “system for regulating rates and classes for market-dominant products established under [Section 3622]’ . . . and thus are subject to potential modification or replacement.”<sup>2</sup>

The Postal Service requests the Commission address this “threshold issue in advance of the beginning of the review proceeding, to allow parties to efficiently prepare for the review and ensure it can be conducted in a timely manner.” Petition at 2.

## III. COMMISSION ANALYSIS

As the Congressional mandate clearly states, part one of the Commission’s task to “review the system” cannot commence until 10 years following the passage of the PAEA, December 20, 2016. 39 U.S.C. § 3622(d)(3). It is only *after* this 10-year review, *a period of notice and comment*, and a determination that the system is not achieving the statutory objectives that “the Commission may, by regulation, make such modification or adopt such alternative system for regulating rates and classes for market-dominant products as necessary to achieve the objectives.” *Id.*

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<sup>2</sup> Petition of the United States Postal Service for the Initiation of a Proceeding to Clarify the Scope of the Review of the System for Regulating Market-Dominant Rates and Classes, April 7, 2016, at 1-2 (Petition) (emphasis added).

The Postal Service's Petition to immediately define the scope of the Commission's 10-year review is premature and the issues outlined in its Petition are not ripe.

Section 3622(d)(3) requires that notice and comment must precede any Commission determination that the system is not achieving the objectives taking into account the factors and any subsequent Commission action to modify or replace the current system. 39 U.S.C. § 3622(d)(3). To opine on the scope of its authority to act (without defining what those actions might be) before the Commission is lawfully bound to begin the 10-year review would be contrary to the statute. The Commission will not disregard the clear instruction of the statute. The Postal Service's Petition requesting clarification of the Commission's authority to make changes also assumes the Commission would determine after its 10-year review that the system is not meeting its objectives and, therefore, that changes to the current system are required. The Commission makes no such assumptions.

Although the Postal Service would like certainty now, adjudicating this proceeding, as the Postal Service requests, would not only be contrary to the statutory process but may unnecessarily inject more uncertainty into the 10-year review. Petition at 2. Asking the Commission, before the 10-year review begins, to define the scope of the "system for regulating rates and classes for market-dominant products established under [Section 3622]," and to define the scope of the system that may be "subject to potential modification or replacement" may result in incomplete or preliminary opinions that might change after the 10-year review begins. *Id.* at 1-2.

The Commission finds the Postal Service's Petition premature, and it will be held in abeyance until after the 10-year review docket is established later this year, and the Commission determines it is appropriate or necessary to define the scope of the "system . . . subject to potential modification or replacement" and its authority in the context of the 10-year review proceeding. *Id.*

#### IV. CONCLUSION

The Commission finds the Postal Service's Petition is premature and holds it in abeyance until after the 10-year review docket has been established.

The Commission is familiar with and sensitive to the issues the Postal Service raises in its Petition concerning the 10-year review. As a result, the Commission intends to inform the public about its plans for the 10-year review (including proposed scheduling and opportunities for public comment) in advance of December 20, 2016, after which the review will begin.

#### V. ORDERING PARAGRAPH

The Postal Service's Petition for a rulemaking is held in abeyance until after the Commission establishes the 10-year review docket after December 20, 2016, and the Commission determines it is appropriate or necessary to define its authority.

By the Commission.

Stacy L. Ruble  
Secretary

Supplemental Views of Commissioner Hammond

## SUPPLEMENTAL VIEWS OF COMMISSIONER HAMMOND

In its petition, the Postal Service readily acknowledges that the PAEA ties the Commission's review of the market-dominant rate system to the Act's 10-year anniversary. But, it goes on to argue that setting forth the contours of that system now "would in no way prejudge" the questions that the Commission will take up during the review.

In reality, however, prejudgment would be inevitable. Beginning this December, under the statute, the Commission will examine whether the system is achieving what the Congress intended and whether any changes are merited. Defining the precise contours of the system, as the Postal Service requests, is not so easily separable from those questions, as shown by the significant disagreement that the Postal Service observes exists between it and certain other interested parties on fundamental questions regarding the system.

Given all this, the Commission must withhold judgment until all parties have been given notice and an opportunity to comment. Therefore, while I concur with my fellow Commissioners in this Order, I believe simply denying the petition would have been appropriate as well.